

Message Text

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DOT-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00 H-02

INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

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C O N F I D E N T I A L USUN 3122

FROM USDEL LOS

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT

1. INFORMAL PLENARY CONTINUED AUGUST 4 TO CONSIDER
ART. 6 (CONCILIATION) AND ART. 7 (APPLICATION OF
PART IV, SECTION II PROCEDURES FOR OBLIGATORY, FINAL AND
BINDING DECISIONS).

2. NETHERLANDS PROPOSED ADDITION OF A NEW SUBPARAGRAPH
TO ART. 6 ALONG FOLLOWING LINES: QTE THE PROCEDURE UNDER
THIS ARTICLE IS DEEMED TO BE EXHAUSTED IF THE REPORT SUB-
MITTED BY THE COMMISSION IN ACCORDANCE WITH ART. 7 OF
ANNEX 1A (A) HAS NOT BEEN EXPRESSLY ACCEPTED BY
THE PARTIES TO THE DISPUTE WITHIN THREE MONTHS OF ITS
SUBMISSION, OR (B) IS REJECTED EARLIER BY ONE OF THE PARTIES
TO THE DISPUTE. UNQTE EFFECT OF PROPOSAL IS TO ESTABLISH
CLEARLY A POINT AFTER CONCILIATION COMMISSION COMPLETES ITS
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WORK WHEN EITHER PARTY MAY PROCEED TO A PROCEDURE ENTAILING

A BINDING DECISION.

3. NETHERLANDS PROPOSAL RECEIVED SUPPORT FROM 15 SPEAKERS IN PRINCIPLE, WITH SOME SUGGESTING IT IS BETTER TO REFER TO (A) TO SETTLEMENT OF THE DISPUTE RATHER THAN ACCEPTANCE OF A CONCILIATION REPORT THAT IS NOT BINDING. THREE SPEAKERS (ISRAEL, BAHAMAS AND BAHRAIN) EXPRESSED UNEASINESS THAT NETHERLANDS FORMULATION CASTS DOUBT ON NON-BINDING NATURE OF CONCILIATION. AUSTRALIA, WHICH HAD PREVIOUSLY SOUGHT TO EMPHASIZE OBLIGATORY CONCILIATION IN PLACE OF OBLIGATORY BINDING PROCEDURES, SUPPORTED NETHERLANDS PROPOSAL IN PRINCIPLE AND PROPOSED NO OTHER SIGNIFICANT AMENDMENTS TO ART. 6 AT THIS TIME.

4. CONSIDERATION OF ART. 7, WHICH ESTABLISHES WHEN THE BINDING PROCEDURES CAN BE INVOKED, OPENED WITH ARGENTINE RESERVATION OF ITS POSITION RESPECTING THE STRUCTURE OF SECTION II OF PART IV RSNT. GOA REP SAID THAT THE BASIC PRINCIPLE SHOULD BE THAT DISPUTES WHICH ARISE FROM ZONES SUBJECT TO NATIONAL JURISDICTION SHOULD NOT BE SUBJECT TO BINDING ADJUCATION UNDER SECTION II, ALTHOUGH CERTAIN EXCEPTIONS COULD BE MADE AND OBJECTED TO THE FORMULATION IN ARTICLE 18 OF SOVEREIGN RIGHTS BEING AN EXCLUSION TO THE PRINCIPLE THAT CDS APPLIES. ECUADOR SUPPORTED ARGENTINA AND INDICATED THIS APPROACH IS IN LINE WITH THE MAIN TREND IN THE GROUP OF 77. INDIA INDICATED THAT SECTION II INCLUDING SPECIAL PROCEDURES, SHOULD ONLY APPLY IN MATTERS INVOLVING EXCLUSIVE RIGHTS OR SOVEREIGN RIGHTS WITH CONSENT OF THE COASTAL STATE, EITHER BY GENERAL DECLARATION OR IN A SPECIFIC CASE. IN ADDITION, INDIA PROPOSED MERGER OF THE SEABEDS AND LOS TRIBUNALS INTO ONE TRIBUNAL WITH SEVERAL BENCHES.

5. UK PROPOSED DELETING ART. 7, PARA 1 AND ADDING TO EXISTING PARA 2 SUBSTANCE OF PARA 1, BUT DID NOT INCLUDE THE CROSS REFERENCE TO ART. 18. TURKEY WISHED TO CONDITION APPLICATION OF SECTION II ON FIRST CONCLUSION OF MEANINGFUL NEGOTIATIONS. GREECE OPPOSED TURKISH PROPOSAL
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AS TOO AMBIGUOUS AND SAID IT WOULD JEOPARDIZE OBLIGATORY FINAL AND BINDING SETTLEMENTS OBJECTIVE.

6. CONSIDERATION OF ART. 7 WILL CONTINUE.
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